

FILED

AUG 04 2015

[Signature]
CLERK

Gerald W. LeBeau, 14-01049
Name and Prisoner/Booking Number

Pennington County Jail
Place of Confinement

307 St. Joe, St
Mailing Address

Rapid City, SD 57701
City, State, Zip Code

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
Western DIVISION

Gerald Wayne LeBeau
(Full Name of Plaintiff)

Case No. 15-5057
(To be supplied by the Clerk)

Plaintiff,

vs.

U.S. Marshall John Doe (#1),

U.S. Marshall John Doe (#2),

Assistant U.S. Attorney Ted McCord (#3)

Honorable Karen E. Schrier (#4)
(Full Name of Each Defendant)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☒ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

Defendants.

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- a. ☐ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
b. ☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
c. ☒ Other: (Please specify.) Art I, 1868 Ft. Laramie Treaty "Bad Men Clause"

2. Name of Plaintiff: Gerald Wayne LeBeau

Present mailing address: Pennington County Jail 307 St. Joe St, Rapid City, SD 57701
(Failure to notify the Court of any change of address may result in dismissal of this action.)

Institution/city where violation occurred: Federal Courthouse Rapid City, SD

3. Name of first Defendant: John Doe (1). The first Defendant is employed as:
U.S. Marshall Service at Federal Court house, Rapid City, SD
 (Position and Title) (Institution)
 This Defendant is sued in his/her: ☒ individual capacity ☐ official capacity (check one or both)
 Explain how this Defendant was acting under color of law: Acting in the official capacity as a U.S. Marshall under color of Federal law.
4. Name of second Defendant: John Doe (2). The second Defendant is employed as:
U.S. Marshall Service at Federal Court house, Rapid City, SD
 (Position and Title) (Institution)
 This Defendant is sued in his/her: ☒ individual capacity ☐ official capacity (check one or both)
 Explain how this Defendant was acting under color of law: Acting in the official capacity as a U.S. Marshall under color of Federal law.
5. Name of third Defendant: Ted McBride (3). The third Defendant is employed as:
Assistant U.S. Attorney at Federal Court house, Rapid City, SD
 (Position and Title) (Institution)
 This Defendant is sued in his/her: ☒ individual capacity ☐ official capacity (check one or both)
 Explain how this Defendant was acting under color of law: Acting in the official capacity as a Assistant U.S. Attorney under color of Federal law.
6. Name of fourth Defendant: Honorable Karen Schrier (4). The fourth Defendant is employed as:
Chief U.S. District Court Judge at Federal Court house, Rapid City, SD
 (Position and Title) (Institution)
 This Defendant is sued in his/her: ☒ individual capacity ☐ official capacity (check one or both)
 Explain how this Defendant was acting under color of law: Acting in the official capacity as a United States District Judge under color of law.

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☒ Yes ☐ No
2. If your answer is "yes," how many lawsuits have you filed? 1. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
 a. Parties to previous lawsuit:
 Plaintiff: Gerard Wayne LeBeau

Defendants: Pennington County Jail, Rapid City, SD And
United States Marshall Service, Rapid City, SD

- b. Court: (If federal court, identify the district; if state court, identify the county.) District of South Dakota Western Division
- c. Case or docket number: 5:14-cv-05041-KES
- d. Claims raised: Fail to state a claim
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) Dismissed, No appeal, Not pending
- f. Approximate date lawsuit was filed: 7-24-14
- g. Approximate date of disposition: 1-6-15

4. Second prior lawsuit:

- a. Parties to previous lawsuit:
Plaintiff: _____
Defendants: _____
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
- c. Case or docket number: _____
- d. Claims raised: _____
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- f. Approximate date lawsuit was filed: _____
- g. Approximate date of disposition: _____

5. Third prior lawsuit:

- a. Parties to previous lawsuit:
Plaintiff: _____
Defendants: _____
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
- c. Case or docket number: _____
- d. Claims raised: _____
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- f. Approximate date lawsuit was filed: _____
- g. Approximate date of disposition: _____

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

C. CAUSE OF ACTION**COUNT I**

1. The following constitutional or other federal right has been violated by the Defendant(s): Article I
1868 Ft. Laramie Treaty Violation under the
"Bad Men Clause"

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issued should be stated in a different count)
- | | | |
|---|--|---|
| <input type="checkbox"/> Medical care | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Mail |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Retaliation | <input type="checkbox"/> Exercise of religion |
| <input checked="" type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ |

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

United States District Judge, Karen E. Schriener (4) Assistance U.S. Attorney Ted McBride (3)
allowed U.S. Marshall's John Doe (1), (2) to deliberate indifference, maliciously/sadistically,
deprivation of the right of bodily liberty, and atypical and significant
hardship. Restraints were unlawful in the matter that they were applied,
dangerous, painful or injurious, degrading done for a punitive or
retaliatory purpose, or continued for longer than safety required.
Used force while under the color of federal law, by assaulting plaintiff
by slamming his face down on the courtroom table (courtroom video
will support his claim), crushing plaintiff's cheekbone as well
as pulling the feet shackles out from under plaintiff while "hog-tied"
inflicting pain and suffering and leg/arm cuffs were too
tight causing great pain. Marshall's then carried plaintiff
out of courtroom meant to instill fear/pain. Being
"hog-tied" plaintiff posed NO THREAT yet plaintiff was
viciously assaulted requiring medical attention for
said injuries.

4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

Plaintiff suffered crush cheekbone, black eye, cut above the
eye, both wrist and ankles are bruised and the left side
of wrist and ankle plaintiff has no feelings.

5. **Administrative Remedies:**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No

b. Did you submit a request for administrative relief on Count I? ☐ Yes ☒ No

c. Did you appeal your request for relief on Count I to the highest level? ☐ Yes ☒ No

d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. Did not submit will be administrative remedy

before Court of Federal Claims

D. REQUEST FOR RELIEF

State briefly what you want the Court to do for you.

Plaintiff seeks compensatory damages against U.S. Marshall's John Doe (1), (2) and U.S. Attorney Ted McBride (3) / Judge Karen E. Schrier (4) in individual capacities in the amount of \$100,000 each.

Plaintiff seeks compensatory damages against U.S. Marshall's John Doe (1), (2) and U.S. Attorney Ted McBride (3) / Judge Karen E. Schrier (4) official capacities in the amount of \$100,000 each.

Plaintiff seeks punitive damages against U.S. Marshall's John Doe (1), (2), and U.S. Attorney Ted McBride (3) / Judge Karen E. Schrier (4) in individual capacities in the amount of \$100,000 each.

Plaintiff seeks punitive damages against U.S. Marshall's John Doe (1), (2), and U.S. Attorney Ted McBride (3) / Judge Karen E. Schrier (4) official capacities in the amount of \$100,000 each.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

7-31-15

DATE

Gerald L. Beane

SIGNATURE OF PLAINTIFF

(Name and title or paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable.